United Nations A/62/272/Add.1

General Assembly

Distr.: General
5 November 2007

Original: English

Sixty-second session
Agenda items 126 and 136

Review of the efficiency of the administrative and financial functioning of the United Nations

Report on the activities of the Office of Internal Oversight Services

Report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the 18-month period ended 30 June 2007

Note by the Secretary-General

The Secretary-General has the honour to transmit for the consideration of the General Assembly his comments on the report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the 18-month period ended 30 June 2007 (A/62/272).

Summary

The report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the 18-month period ended 30 June 2007 summarizes its activities related to major investigations and also puts forward observations to be addressed by the Secretariat. The present note provides comments and clarifications on each section of the report and addresses the broader issues raised by the Task Force. An overview of procurement reform is included to provide the context in which specific procurement reform initiatives are being introduced. It also provides an overview of the established procedures for addressing cases of fraud and presumptive fraud arising from investigations, as well as further information on the major investigations summarized in the report.

With regard to cases of staff members under active consideration, the Secretary-General notes that the summary of the report states that "the findings of the Task Force should be regarded as those of the Task Force, and not a final determination by the administration or the Organization". The Secretary-General stresses that each of the staff members concerned is presumed innocent pending the conclusion of his or her case.

07-58102 (E) 071107

Contents

		Paragraphs	*Page*
I.	Introduction	1–11	3
II.	Comments on the summary of investigation activities	12–17	5
III.	Comments on major investigations: results and recommendations	18–42	7
IV.	Comments on Task Force resources	43	12
V.	Comments on the overall observations based on Task Force investigations	44–63	12
VI.	Plan for the completion of the work of the Task Force	64	18

I. Introduction

1. The Secretary-General notes that the report of the Office of Internal Oversight Services on the activities of the Procurement Task Force (A/62/272) focuses on a large number of issues that have already been or are in the process of being addressed by the Organization in order to prevent fraud and mitigate the risks associated with fraud. In this regard, it is recalled that the report of the Secretary-General on investing in the United Nations for a stronger Organization worldwide: procurement reform (A/60/846/Add.5 and Corr.1) includes a number of the recommendations the made pursuant to an independent study of the internal controls in United Nations Secretariat procurement operations using a risk-based diagnostic framework.

2. The Procurement Service has already implemented a number of the reforms proposed in the report of the Secretary-General, and has additionally adopted even wider reforms in the context of its overall operational improvement. A number of the reform deliverables introduced under the rubric "internal control" in the report of the Secretary-General have already been implemented, and the remainder are in progress. The risks associated with procurement will again be assessed as part of the current enterprise risk management and internal control framework review.

3. The following paragraphs highlight some of the major initiatives taken as part of the procurement reform agenda. A comprehensive report on this matter will be submitted by the Secretary-General to the General Assembly at its current session.

Procurement Reform Implementation Team

4. The establishment in March 2007 of the Procurement Reform Implementation Team to coordinate the procurement reform agenda is among a number of initiatives that have contributed to the strengthening of internal controls within the Procurement Service. The key reforms implemented by the Secretariat include: (a) the development of procurement training material; (b) the delivery of staff training in general and in specialist areas such as basic procurement and best value for money; and (c) the promotion of ethics and integrity awareness at Headquarters and external locations through training and the dissemination of ethics handbooks. In addition, the revision of the Procurement Manual and the development of a system to handle vendor appeals are among the current deliverables being initiated by the Team.

Planning, Compliance and Monitoring Section

5. In order to enhance the continuous review and strengthening of internal control measures, and in accordance with A/60/846/Add.5 and Corr.1, the Planning, Compliance and Monitoring Section was established in the Procurement Service in May 2007. The primary responsibilities of the Section are to coordinate acquisition planning; to monitor compliance with procurement policies, guidelines and procedures; and to review and implement the findings and recommendations of the oversight bodies. In addition, following the standards and policies developed by the Procurement Reform Implementation Team, the ethics and integrity programmes and other initiatives to promote the highest standard of ethical conduct among all staff involved in the acquisition process will continue to be developed. The conduct of management reviews of procurement activities in peacekeeping missions by the

Planning, Compliance and Monitoring Section is consistent with the Procurement Service's focus on improving risk management.

Promoting an ethical culture

6. The Procurement Service has introduced a comprehensive series of measures to promote an ethical culture among staff involved in the acquisition process and to strengthen the accountability framework. These measures include a training module on ethics and integrity, which is mandatory for all members of the Service and is also offered to other staff members involved in the acquisition process at Headquarters and field locations. A zero-tolerance guideline prohibiting the acceptance by the Service's staff of gifts or hospitality from vendors has been promulgated. A revised Supplier Code of Conduct has been published on the website of the Service in the six official languages of the United Nations. In addition, all procurement officers and staff, regardless of level, whose principal occupational duties are the procurement of goods and services for the United Nations, as well as staff who have direct access to confidential procurement information, are obligated to file an annual financial disclosure statement with the Ethics Office, in accordance with ST/SGB/2006/5.

Post-employment restrictions

7. One of the most significant reforms introduced by the Organization to promote an ethical culture and to reinforce the internal control framework is the post-employment restriction, which is designed to eliminate the risk of conflict of interest even after the separation of staff from the United Nations. Promulgated by the Secretary-General on 26 December 2006, ST/SGB/2006/15 prohibits the employment by vendors of former United Nations staff involved in the procurement process for a minimum of one year following separation, and renders any vendor of goods or services subject to disbarment, suspension or termination in the event of violation of this restriction. Consistent with the zero-tolerance policy, the Secretary-General's bulletin prohibits serving staff members from accepting any promise or offer of employment from any contractor or vendor of the United Nations, and prescribes the procedure to be followed by a staff member who receives such a promise or offer. Failure to comply with the provisions of the bulletin renders a staff member subject to disciplinary action in accordance with the Staff Rules.

Rotation of staff

8. The rotation of staff involved in procurement is a vital element in the maintenance of a robust framework of internal controls. The Procurement Service has therefore implemented a best practice by which the rotation of staff members is required at the end of each three-year period, in order to mitigate the risk that inappropriate relations may develop between staff and vendors. Thus, employees involved in operational procurement will be obliged to terminate their involvement with particular goods or services, and the consequential exposure to specific categories of vendors.

Vendors

9. A major aspect of the procurement reforms relate to the management of vendors. Pursuant to General Assembly resolution 61/246, a Vendor Registration

and Management Team became operational in August 2007, with a mandate to institute procedures consistent with the proposals presented in A/62/272, paragraphs 70 and 71. The High-level Committee on Management Procurement Network is establishing a framework for the imposition of sanctions against suspect vendors, and a senior vendor review committee is being established to cover non-routine matters so that the existing Vendor Review Committee can focus on routine operational matters. Further details of these measures can be found in section V below.

Headquarters Committee on Contracts

10. The Headquarters Committee on Contracts has undertaken a number of measures to strengthen the internal control system. Such measures include the further clarification of the Committee's policies and procedures, including the development of standing operating procedures. Training and certification of members of Local Committees on Contracts in all the field missions began in September 2007 and will be rolled out over a period of several months. A certificate will be issued to the participants, who can then serve on Local Committees on Contracts in other peacekeeping missions. The Department of Management has been using an electronic system for processing Headquarters Committee on Contracts cases, which has streamlined the workflow and approval processes for cases vetted by the Committee. This has enhanced not only the efficiency of the process, but also security and the effectiveness of the audit trail. Such a system is being installed in field missions. The Headquarters Committee on Contracts is also developing monitoring procedures in consultation with the Office of Internal Oversight Services, the Procurement Service and the Department of Field Support. The intention is to develop simple key indicators, which would assist the Committee in the monitoring and evaluation of procurement activities.

11. The Secretary-General will continue to monitor progress in implementing procurement reform, as well as the recommendations contained in the individual investigation reports and the broader issues raised by the Task Force to ensure that they are being dealt with in a timely and effective manner.

II. Comments on the summary of investigation activities

A. Task Force caseload

12. The Secretary-General has no specific comments on the caseload of the Task Force.

B. Summary of investigation activities

13. Paragraph 8 of the report of the Office of Internal Oversight Services states that the Procurement Task Force cleared three of the eight staff members who in January 2006 were placed on special leave with pay. While one of the three staff members was initially cleared of wrongdoing, new evidence concerning that staff member's actions came to light, and the Task Force subsequently issued a report (PTF-R005/07) that contained findings of wrongdoing on the part of the staff member.

C. Challenges in conducting investigations

14. The Procurement Task Force has identified three main challenges in conducting investigations. Comments on how those issues are being addressed are provided below.

1. Procurement records

15. In relation to paragraph 11 of the report of the Office of Internal Oversight Services, the Procurement Service is undertaking a comprehensive revision of the filing system, which will take effect in 2008, in order to improve the system for the storage, security and movement of procurement files. This will reflect recommendations of the Office of Internal Oversight Services concerning improved record keeping for areas such as bid-opening procedures. The Procurement Service and the Department of Field Support are working to strengthen procedures and standards for filing and record keeping for procurement, as part of broader ongoing procurement reform measures. With regard to the specific cases mentioned in the report of the Office of Internal Oversight Services, a controlled and secure records management regime has been established in United Nations Mission in the Sudan. The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) has updated and reissued and is enforcing instructions for procurement case filing and file handling and is in the process of establishing an inventory of procurement documents and files. In addition, a centralized, secure procurement filing facility is being established, where all procurement files will be maintained and controlled.

2. Mutual legal assistance

16. On the issue of mutual legal assistance between the Organization and Member States, raised in A/62/272, paragraph 12, it should be noted that the Office of Internal Oversight Services had not formally requested the Secretary-General to explore such possibilities. In any case, mutual legal assistance in the use of legal powers in a foreign jurisdiction is generally established through bilateral treaties between States. Such treaties call for cooperation between the judicial bodies of States parties that have comparable laws and authorities of law enforcement. It therefore appears unlikely that such treaties could be expanded to include cooperation with an international organization in its internal investigations. The Secretary-General will, however, explore with the Office of Internal Oversight Services what other mechanisms may be available to seek cooperation with Member States at the international level.

3. Vendor cooperation

17. In paragraphs 13 to 17 of its report, the Office of Internal Oversight Services describes the problems it faces in ensuring that United Nations vendors cooperate with its investigations. In particular, in paragraph 14, the Office states its belief that "the United Nations General Conditions of Contract and vendor registration forms should be amended to make absolutely clear that vendors, their subsidiaries, agents, intermediaries and principals are required to meaningfully cooperate with the investigations". The Secretary-General notes that this matter has been the subject of recent consultations between the Office of Internal Oversight Services, the Procurement Service and the Office of Legal Affairs, following earlier

recommendations to this effect by the Board of Auditors and the Office of Internal Oversight Services. As a result of those discussions, it has been agreed that a new article on audits and investigations, requiring vendors to cooperate with investigations conducted by the Organization, will be included in the revised version of the United Nations General Conditions of Contract published later this year.

III. Comments on major investigations: results and recommendations

A. General comments

18. The Secretary-General reiterates that, as stated in the summary of the report of the Office of Internal Oversight Services, the findings reported in relation to cases that remain under active consideration should be regarded as the findings of the Procurement Task Force, and that those findings are not to be regarded as a final determination on the part of the Organization. The Secretary-General wishes to emphasize that the cases currently under active consideration within the internal justice system are being handled in strict compliance with the relevant rules and procedures, which include obtaining from the staff members concerned written comments on the findings of the Task Force and analysing those comments in the light of the evidence provided by the Task Force and the staff member. Depending on the merits of the case, the matter may be decided by the Secretary-General or may be first referred to a Joint Disciplinary Committee for advice as to whether misconduct has been established. No final determination on whether misconduct has occurred can be made until the proceedings in each case have been completed. The Secretary-General stresses that each of the staff members concerned is presumed innocent pending the conclusion of his or her case.

19. The following is an overview of the existing procedures for addressing cases of fraud and presumptive fraud arising from investigations.

Internal disciplinary procedures

20. In cases where an investigation contains findings and evidence indicating that a staff member may have engaged in misconduct, including fraud and corruption, the head of department or office concerned refers the matter to the Office of Human Resources Management for appropriate action. The Office analyses the report and supporting evidence and determines whether there is a sufficient basis for charging the staff member with misconduct. If so, the staff member is fully informed of the allegations and of the right to counsel, is given a copy of all the supporting evidence and is requested to provide comments and any additional evidence. The Office reviews the entire dossier, including the investigation report and supporting evidence, the staff member's comments and any additional information and evidence. On that basis, the Office does one of the following: (a) decides that the case should be closed, in which case the staff member is immediately notified that the charges have been dropped and that no further disciplinary action will be taken, without prejudice to the possibility of applying administrative measures, such as the imposition of a reprimand or recovery of overpayments; (b) refers the matter to a Joint Disciplinary Committee; or (c) recommends summary dismissal of the staff member. The decision on whether to summarily dismiss a staff member, or to

impose a disciplinary measure after receiving advice from the Joint Disciplinary Committee, is taken by the Deputy Secretary-General on behalf of the Secretary-General.

Investigations indicative of possible violations of the laws of an applicable jurisdiction

21. To the extent that the alleged conduct raises issues of possible violations of the laws of an applicable jurisdiction, those matters are referred to the authorities of the relevant Member State, through its Permanent Mission to the United Nations, after appropriate steps have been taken to ensure that the referral does not prejudice the privacy rights of staff members and other third parties who are not subjects of the referral, but who are mentioned in the documentation contemplated for referral.

Cooperation with investigations of competent authorities

22. In cases where the authorities in question have conducted their own investigations concerning a referred matter, or have instituted legal proceedings, the Organization cooperates with the investigations and proceedings, in accordance with its obligation pursuant to article V, section 21, of the Convention on the Privileges and Immunities of the United Nations to "cooperate at all times with the appropriate authorities of Members to facilitate the proper administration of justice".

Investigation and/or prosecution commenced unilaterally by the national authorities of a Member State

23. In cases where an investigation and/or prosecution has been commenced unilaterally by the national authorities of a Member State, without a specific referral by the Organization, cooperation with the investigation and/or prosecution is provided, in accordance with article V, section 21, of the Convention, and taking into account all the circumstances of the case, including the extent to which the Organization's non-cooperation might impede the course of justice and whether the cooperation is consistent with the interests of the Organization.

B. Reports relating to eight staff members placed on administrative leave

1. Investigation report on Sanjaya Bahel, including the companies Thunderbird, PCP and Telecommunications Consultants of India, Ltd

24. The last sentence of paragraph 21 of the report of the Office of Internal Oversight Services states that "at trial Mr. Bahel's defence admitted that the fraud upon the Organization exceeded $20 million for the manpower contract alone". That sentence suggests that Mr. Bahel defrauded the Organization out of $20 million. Upon review of the relevant court transcripts, the Secretary-General notes that Mr. Bahel's counsel did not admit that his client had defrauded the Organization out of that amount, but rather used that figure to impeach the credibility of a representative of Telecommunications Consultants of India Ltd. Since neither the Organization, nor the prosecution, nor Mr. Bahel's counsel ever made the argument that Mr. Bahel had defrauded the Organization out of $20 million, the text of the

report cited above may not appropriately reflect the loss incurred by the United Nations as a result of Mr. Bahel's conduct.

2. Report on two United Nations vendors and a United Nations staff member

25. The Secretary-General has no specific comments on paragraphs 22 to 25 of the report of the Office of Internal Oversight Services.

3. Interim report on a United Nations staff member

26. The contract for electrical services referred to in paragraph 26 of the report of the Office of Internal Oversight Services was renewed in July 2005 subsequent to a competitive bidding process that was conducted in full compliance with the Organization's Financial Regulations and Rules. The contract was awarded to the same vendor that had held the contract immediately prior to July 2005. Performance appraisal mechanisms were put in place. The performance of the vendor was found to be acceptable both when the United Nations exercised an option to extend the contract for one year, from July 2004 to June 2005, and when the contract was awarded to the same vendor on 1 July 2005.

27. The overcharging by the vendor was found by the substantive office. Full adjustments for the overcharges were made in the regular monthly invoice payments from the United Nations to the vendor. Following an audit recommendation, a more detailed invoicing process was put in place. In addition, under the contract that started in July 2005, an electronic time and attendance system was implemented.

28. Paragraph 27 of the report of the Office of Internal Oversight Services states that the staff member omitted critical financial information from his financial disclosure submissions to the Organization for 2003, 2004 and 2005, including information concerning his bank accounts, real property and spouse, contrary to the Organization's rules on financial disclosure. In this regard, it is important to note that the staff member was asked to make a specific financial disclosure to the Procurement Task Force for the purposes of its investigations, not as part of the regular United Nations financial disclosure programme, which is now administered by the Ethics Office on a confidential basis.

4. Amended report on a United Nations staff member — interim report on the United Nations Mission in the Sudan and investigation report on a United Nations staff member

29. With regard to paragraphs 29 and 30 of the report of the Office of Internal Oversight Services, the Secretary-General notes that the Office considers the summary provided in its report preliminary and further notes that differences exist with regard to financial loss, compliance of equipment with International Civil Aviation Organization safety specifications, the necessity of equipment and whether an increase in the amount of the contract was justifiable.

5. Report on a United Nations staff member and interim report on two United Nations staff members

30. The Secretary-General has no specific comments on paragraphs 31 and 32 of the report of the Office of Internal Oversight Services.

6. Investigation concerning a United Nations staff member

31. The Secretary-General has no specific comments on paragraphs 33 and 34 of the report of the Office of Internal Oversight Services.

7. Report on a United Nations staff member

32. The Secretary-General has no specific comments on paragraphs 35 to 37 of the report of the Office of Internal Oversight Services.

C. Interim report on United Nations Organization Mission in the Democratic Republic of the Congo procurement and five United Nations procurement officials

33. In 2004 MONUC management raised with the Office of Internal Oversight Services the issue of possible fraudulent behaviour of some of its procurement staff and has been working with the Office since that time, most recently with the Procurement Task Force, to ensure full investigation of the cases.

34. A joint procurement management review has been conducted in MONUC by the Department of Management and the Department of Field Support to establish a road map for procurement. MONUC has submitted a progress report stating, among other things, that all Mission procurement staff, the Local Committee on Contracts and selected requisitioners had received comprehensive training, including ethics training, in May and June 2007; that anti-fraud training for Mission senior management had been conducted on 27 and 28 October 2007; and that the restructuring of the Procurement Section along commodity lines had been completed. In addition, there have also been significant detailed technical initiatives in areas such as vendor relationship management and internal controls.

35. In paragraph 40 of its report, the Office of Internal Oversight Services stated that five MONUC staff members had been charged with misconduct and placed on special administrative leave. However, under the Staff Regulations and Rules of the United Nations, there is no such category of leave. While the staff members concerned were initially placed on special leave with pay before being charged with misconduct, the special leave was converted to suspension with pay when they were charged with misconduct.

D. Report on ground fuel procurement in the United Nations Stabilization Mission in Haiti

36. The Secretary-General has no specific comments on paragraphs 43 to 46 of the report of the Office of Internal Oversight Services.

E. Interim report on matters concerning former United Nations staff member Alexander Yakovlev and associated vendors, report on two United Nations vendors, report on a United Nations vendor and report on two United Nations vendors

37. The Secretary-General has no specific comments on paragraphs 47 to 50 of the report of the Office of Internal Oversight Services.

F. Report on a United Nations vendor and the United Nations Pouch Unit

38. As recommended by the Procurement Task Force, the vendor referred to in paragraphs 51 to 54 of the report of the Office of Internal Oversight Services has been removed from the Organization's vendor roster. The procedures for the use of the pouch have been revised, and all pouch units in offices away from Headquarters have been informed of the revised procedures. The guidelines have also been distributed to the staff of the Pouch Unit and are posted in the area. Follow-up meetings were held with the staff to stress the importance of following the procedures. It should be emphasized that the United Nations policies concerning shipments of the Organization that are transported by pouch have been and continue to be in accordance with the Convention on the Privileges and Immunities of the United Nations.

G. Interim report on a United Nations staff member and United Nations Office for Project Services procurement

39. The connection with paragraphs 55 to 57 of the report of the Office of Internal Oversight Services, the Executive Director of the United Nations Office for Project Services (UNOPS) has summarily dismissed the staff members concerned. UNOPS is now in the process of following up on the other recommendations of the Office of Internal Oversight Services.

H. Final report on the sale of United Nations Postal Administration philatelic materials

40. Although in paragraphs 58 and 59 of its report the Office of Internal Oversight Services indicates that the report of the Task Force (PTF-R004/07) has already been issued, the Secretary-General has not yet received it.

I. Summary of misappropriation and recovery actions

41. Paragraph 61 of the Office of Internal Oversight Services report, in discussing the status of the efforts of the Organization through the United States authorities to receive restitution from a former staff member who pled guilty to procurement fraud, states that it was expected that a restitution order would be issued in the amount of at least $900,000. In this regard, the Secretary-General notes that the Organization would be in a position to seek restitution in the United States only in the amount of its quantified financial losses. The Organization's submission to the United States authorities of its restitution request will be considered at the sentencing of the former staff member. The Organization is currently in the process of quantifying such a restitution request and will make its submission to the authorities at the appropriate time, once the date for sentencing has been announced. Any recovery that the Organization may achieve in this matter would depend on such a submission, and therefore, the amount of $900,000 cited in the report may not adequately reflect the Organization's expected recovery.

42. In paragraph 62 of its report, which gives further details on the status of the efforts of the Organization to recover funds from the same staff member, the Office of Internal Oversight Services describes the contacts made by the Procurement Task Force with various national authorities in this regard concerning bank accounts held by that staff member. The report states that the Task Force expected that the Organization could recover at least $2 million — and as much as $3.5 million — from various accounts associated with the staff member if matters were properly pursued. The Secretary-General notes that any such recovery would require action separate from and in addition to the restitution efforts discussed in paragraph 61 of the report. In this regard, the Organization is planning to liaise with the authorities of the appropriate Member States so as to establish whether it would have a course of action under the laws of those Member States to seek compensation from the former staff member.

IV. Comments on Task Force resources

43. The Secretary-General is concerned that in its report, the Office of Internal Oversight Services included information without any consultation with the Department of Management, which, in accordance with the Financial Regulations and Rules of the United Nations, has the delegated authority to prepare and present budget proposals and financial information to legislative bodies. It should be noted that in paragraph 7 of his report on the Procurement Task Force (A/61/603), the Secretary-General had previously informed the Assembly that charges for the Procurement Task Force would be apportioned between the peacekeeping budgets and the regular budget on the basis of the nature of the cases involved.

V. Comments on the overall observations based on Task Force investigations

A. United Nations vendors

44. With regard to paragraph 70 of the report of the Office of Internal Oversight Services, the Vendor Registration and Management Team, established pursuant to resolution 61/246, became operational in August 2007, with a mandate to reform United Nations vendor registration. The Team will efficiently manage and develop the vendor database of the United Nations, serve as the secretariat of the Vendor Review Committee and coordinate measures to address vendor misconduct and suspension. The Vendor Registration and Management Team has also been tasked with improving coordination with other registration bodies within the United Nations system in order to improve the control environment throughout the system and to eliminate the risk that vendors that are sanctioned by the Secretariat may continue to obtain contracts from specialized agencies, funds or programmes within the United Nations system.

45. In addition to the existing Vendor Review Committee, a senior vendor review committee is being established. In consultation with the Office of Legal Affairs, the Procurement Service is developing terms of reference for the senior committee and is currently in consultation with the Ethics Office and other relevant services in order to appoint independent representatives to discharge the functions of the

committee. It is intended that the senior vendor review committee will deliberate on non-routine or high-level matters, while the existing Vendor Review Committee will continue to review routine operational matters pertinent to vendor registration and performance issues.

1. Verification of information

46. The Secretary-General acknowledges the need to strengthen the vendor registration process and in this regard notes that the Organization is currently introducing improvements, which include measures for the enhanced screening of vendors and the continuous exercise of due diligence throughout the procurement process. These measures include the use by the Procurement Service of online research tools that provide the most current information on vendors, their affiliates and their principals. The creation of the Vendor Registration and Management Team, as referred to in paragraph 44 above, will permit the Service to effectively perform due diligence and to simultaneously manage the vendor database in a manner that responds to the increasing demands of the Organization.

2. Requirement from vendors

47. The Secretary-General notes the observation in paragraph 70 (b) of the report of the Office of Internal Oversight Services that the current registration forms do not require the would-be registered vendor to disclose the identity of its principals or any former corporate incarnation or to declare that it has no connection with any United Nations staff member, directly or indirectly. The Secretary-General concurs that vendor registration documents should include additional questions and ascertain additional information, such as the use by registered vendors of any intermediaries, agents and consultants in relation to United Nations contracts or contract bids, their corporate identities and filings, and the identities of the principals thereof.

3. Accountability by vendors

48. The Secretary-General notes that the measures designed to mitigate the risks described in paragraph 70 (c) of the report of the Office of Internal Oversight Services were already in place during the conduct of the investigations preceding that report. In particular, section 7.12.2 (a) (iv) of the Procurement Manual prescribes the sanctions to be imposed against vendors who are found to have supplied false information to the United Nations or to have engaged in other unethical behaviour. In addition, the standard bidding documents contain instructions to bidders that include a stipulation that United Nations vendors shall ensure that the information required for them to be registered as United Nations vendors via the United Nations Global Marketplace is updated in a timely manner to reflect changes. The mandatory updates include changes of name due to changes in legal status resulting from mergers, acquisitions or other actions, as well as information on any investigation by a government regulatory, licencing or other authority that could adversely affect the financial or other standing of the vendor. The Secretary-General notes further that the creation of the senior vendor review committee, referred to in paragraph 45 above, facilitates the timely application of sanctions pursuant to section 7.12.2 (a) (iv) of the Procurement Manual. The Vendor Review Committee is empowered to review alleged non-compliant conduct of vendors; to recommend suspension or removal from the database; and to refer such

cases to the Office of Internal Oversight Services for investigation and to the Office of Legal Affairs for appropriate legal action.

4. Requirement on intermediary agent or subcontractor

49. On the issue of requirements for intermediary agents or subcontractors of vendors, the Office of Internal Oversight Services noted in paragraph 70 (d) of its report that the Procurement Task Force had recommended that, with regard to the intermediary agent or subcontractor and their agreements with the vendor, there be a requirement for the same level of disclosure as that required of the vendor; it should be made clear that the acts and declarations of the agent should be deemed to be those of the principal. The Secretary-General agrees with the recommendation that with respect to intermediaries and agents of the vendor, the same level of disclosure should be required as for the vendor itself. To the extent that the Organization must deal with any agents or intermediaries of a registered vendor, all relevant information about such an intermediary or agent should be known so as to ensure the integrity, fairness and transparency of the procurement process.

50. With respect to the question of whether all subcontractors of a vendor should be treated in the same manner recommended for agents and intermediaries of vendors, the Secretary-General notes that article 5 of the United Nations General Conditions of Contract provides that in the event the contractor requires the services of subcontractors, the contractor shall obtain the prior written approval and clearance of the United Nations for all subcontractors. Pursuant to this long-standing contractual provision, the United Nations has the right to review and approve any proposed subcontractors. In practice, this gives the United Nations the right and the opportunity to vet the qualifications and personnel of subcontractors that could play an important role in providing goods or services under a contract with the Organization. Moreover, article 5 of the General Conditions of Contract also makes clear that such approval of a subcontractor by the United Nations shall not relieve the contractor of any of its obligations under the contract. Thus, all United Nations contractors are expressly responsible for the performance of their subcontractors, and the United Nations has a right to approve the latter.

51. However, to go beyond this practice by requiring the same level of disclosure for all subcontractors of a vendor as for the vendors themselves could lead to significant administrative burdens in obtaining all relevant information about all such subcontractors. Indeed, many subcontractors are far removed from the actual provision of goods and services to the Organization, being merely parts of the vendor's chain of supply. In the view of the Secretary-General, the focus should remain on properly administering the existing provisions of article 5 of the General Conditions of Contract by ensuring that for those subcontractors directly involved in the provision of goods and services to the Organization on behalf of a vendor, the Procurement Service undertakes a thorough review of their qualifications and of the identities of the principals involved and, further, provides written approval for the use of such subcontractors, as required by article 5 of the General Conditions of Contract.

B. Removal and suspension of vendors and dissemination of information

52. In regard to paragraphs 71 and 72 of the report of the Office of Internal Oversight Services, the context of the development of a more robust regime for vendor oversight in the United Nations Secretariat, the funds and programmes and specialized agencies, it must be noted that the Procurement Service has submitted a proposal to the High-level Committee on Management Procurement Network to establish a framework for the imposition of sanctions against suspect vendors. The proposal includes guidelines for the institution of a common mechanism for dealing with suspect vendors throughout the United Nations system. The finalized guidelines will define the criteria for the suspension or removal of vendors from the United Nations vendor databases, prescribe the role and responsibilities of the Procurement Network and stipulate the procedures by which the High-level Committee makes its decisions.

53. With respect to the issue of the removal and suspension of vendors and dissemination of information, the Secretary-General notes the observation in paragraph 71 of the report that when an adverse finding is made in relation to a company, it is essential that such a finding be disseminated to all parties concerned. The Secretary-General also notes the view, as stated in paragraph 72 of the report, that there is a need for a vendor removal and suspension system that entitles the Organization, after due process, to publish its decision and in particular to inform other institutions, such as the World Bank and the European Commission, when adverse findings against a company are made. The Secretary-General agrees that vendors involved in improper activities should no longer have the opportunity to transact business with the Organization. The Secretary-General also agrees that, as an administrative matter, this information should be communicated to all interested parties within the Organization and the common system in order to ensure that further business is not transacted with a vendor suspended or removed from the United Nations vendor database under the current United Nations procedures. However, publicizing and disseminating allegations about vendors resulting from investigations would require the development of an appropriate mechanism for ensuring that such vendors are accorded the kind of due process suggested before such information is made public. Without such a mechanism, the Organization might be exposed to claims by vendors, including defamation claims.

54. In this regard, the Secretary-General notes that the World Bank has developed and refined an elaborate, two-stage, vendor suspension and disbarment process for Bank-financed contracts. The process involves detailed investigations into a vendor's integrity or capacity and a review of the allegations against the vendors in question in a forum in which such vendors are provided an opportunity to be heard and to defend themselves.

55. By contrast, the United Nations does not have a comparable mechanism under the existing Financial Regulations and Rules or the procurement policies and practices of the Organization. The Secretary-General would favour the establishment of mechanisms, similar to those developed by the World Bank, that would allow for the publication of the names of vendors that have been removed from the United Nations vendor database, but only after the vendor in question has been fully provided with due process, including the right to defend itself against such proposed removal and publication, as is the case under the World Bank

procedures. The Secretary-General notes, however, that the development of such similar mechanisms would require the dedication of significant resources to be authorized by the General Assembly, if the Assembly were to agree with the recommendation in this regard made by the Office of Internal Oversight Services.

C. Financial disclosure

56. With regard to paragraph 73 of the report of the Office of Internal Oversight Services, owing to the confidential nature of the financial disclosure made by staff members to the Ethics Office, in accordance with the financial disclosure programme governed by ST/SGB/2006/6, access to such information should not be given, unless the investigative body can satisfy the Secretary-General that, on the basis of specified information, there are reasonable grounds to believe that there may be information contained in the staff member's confidential disclosure that is relevant to their investigation.

57. With regard to requests for additional or supplementary financial information in the context of investigations, the Office of Internal Oversight Services may wish to consider using a term other than "financial disclosure" in order to avoid possible confusion and to clearly identify for the staff member both the parameters and the purpose of such a request, as well as the non-involvement of the Ethics Office.

1. Scope of the disclosure in investigations

58. Regarding the scope of the disclosure in investigations, the Task Force has proposed that the United Nations rules be clarified to require all staff members who are under investigation to make additional or supplementary financial disclosures and assist in the verification process at the behest of the Office of Internal Oversight Services. In this regard, the Secretary-General notes that the Office already has sufficient authority, under the existing regulations and rules, to seek additional financial information and documentation. However, the Secretary-General emphasizes that this authority is linked to the specific investigation of allegations against a staff member. Thus, the Office of Internal Oversight Services would be in a position to seek supplementary financial information from staff members to the extent that such requests are relevant to the specific investigation being conducted by the Office.

2. Accountability of staff

59. Paragraph 73 (b) of the report states that the rules governing financial disclosure should be amended to make incomplete or inaccurate disclosure a prima facie ground to bring a charge of misconduct, and that the Ethics Office should refer such cases to the Office of Internal Oversight Services for investigation. In this regard, the Secretary-General notes that there may be cases where a preliminary review shows that the omissions and/or inaccuracies are the result of an innocent mistake or error on the part of a staff member. Thus, the determination as to whether an investigation is warranted in a particular case or whether a matter should be referred for disciplinary action should be made by the Ethics Office, which is responsible for administering the financial disclosure programme, on a case-by-case basis. The Secretary-General retains his discretion as to which matters should be referred for disciplinary action as provided under the current rules.

3. Verification of information

60. It should be clarified that the Ethics Office has established procedures for the verification of financial disclosures made under its programme. With regard to the verification of financial information provided to the Office of Internal Oversight Services in the context of an investigation, as indicated in paragraph 58 above, the existing regulations and rules are sufficient to require staff to assist the Office in the verification process. However, the Secretary-General reiterates that the authority to require disclosure of such information is linked to the specific investigation of allegations against a staff member. Thus, the Office of Internal Oversight Services would be in a position to seek financial information from staff members to the extent that such requests are relevant to the specific investigation being conducted by the Office.

D. Recovery action

61. With respect to the issue of minimizing the financial exposure of the Organization resulting from fraudulent or corrupt conduct, referred to in paragraph 74 of the report, in addition to considering the application of the provisions of the administrative issuances of the Organization imposing financial responsibility on staff members, the Secretary-General has also considered and taken action with respect to seeking financial restitution from persons or entities whose fraudulent or corrupt conduct has resulted in financial loss to the Organization, to the extent that a course of action exists under the laws of the applicable jurisdiction. For example, the Secretary-General has taken a proactive role in seeking restitution from Mr. Bahel and has made a submission in the courts of the Southern District of New York, requesting restitution from him for the financial loss incurred by the Organization as a result of his conduct, as quantified in that submission.

E. Consistency in actions against staff

62. In paragraphs 75 and 76 of its report, the Office of Internal Oversight Services suggests that the Administration has not been consistent in its response to the reports of the Procurement Task Force. The Secretary-General disagrees with that assessment and notes that each of the reports of the Task Force referred for action has been subject to the same rigorous analysis by the Administration, including a thorough consideration of the evidence available, the applicable rules and aggravating and mitigating factors. The Secretary-General also notes that with regard to the six staff members against whom the Procurement Task Force made adverse findings (out of the original eight staff members placed on special leave), the Administration charged all six with misconduct. Similarly, the Administration has charged all of the staff members against whom the Task Force made adverse findings in its reports on MONUC (PTF-R011/07) and MINUSTAH (PTF-R010/07). A number of those cases are under active consideration, at various stages. The Administration will continue to handle the cases using the same standards.

F. Due process

63. With respect to the issue of due process, as discussed in paragraphs 77 to 79 of the report of the Office of Internal Oversight Services, the Secretary-General concurs with the view of the Procurement Task Force that the Organization should ensure that all staff members are fully informed of their due process rights during an investigation. In this regard, while the Secretary-General acknowledges the comments of the Office of Internal Oversight Services with respect to due process rights in the context of its initial administrative investigations, it should be noted that the nature of those rights has been the subject of recent judicial decisions of the United Nations Administrative Tribunal. Therefore, in order to establish with clarity the exact nature of the due process rights of staff members, the Administration has sought the guidance of the Administrative Tribunal and is expecting a ruling by the Tribunal on this issue.

VI. Plan for the completion of the work of the Task Force

64. A separate report will be submitted to the General Assembly for its consideration during the sixty-second session.